CRIMINAL LAW—RAPE BY FRAUDULENT MARRIAGE.—Defendant was convicted of rape under a statute providing that an act of sexual intercourse is rape when accomplished with a female not the wife of the perpetrator, "where she submits under the belief that the person committing the act is her husband, and the belief is induced by artifice, pretense, or concealment practiced by the accused, or by the accused in collusion with her husband, with intent to induce such belief." The accused and prosecutrix had participated in a marriage ceremony which, unknown to prosecutrix, was a sham, and had lived together as husband and wife for over three years when the accused abandoned the prosecutrix and 'married' another woman. *Held,* not guilty of rape, but prosecution recommended on a charge of bigamy. *Draughn* v. *State* (Okla.), 158 Pac. 890.

The decision is put upon two grounds: first, that a common-law marriage was consummated, so that the defendant was in fact the prosecutrix's husband; second, that the statute was designed only to protect a married woman against deception as to the identity of the man with whom she has intercourse. Courts might differ as to whether a valid common law marriage had been consummated but the decision on that point commands approval. Granted that there was a valid marriage, it was unnecessary to construe the statute *ut supra.* If, however, it should be determined in any case that no marriage had resulted from the acts of the parties, then the construction of the statute would become important. In *Wilkerson* v. *State,* 60 Texas Crim. Rep. 388, 131 S. W. 1108, Ann. Cases 1912C 126, it was held that a married man who had induced a single woman to have intercourse with him as the result of a sham marriage was guilty of rape under a similar statute, the fact that he was legally married when the act was committed preventing the transactions from raising a common law marriage. And in *Lee* v. *State,* 44 Tex. Crim. Rep. 354, 72 S. W. 1005, 61 L. R. A. 904, it was held, under the same statute, that a single man who induced intercourse by means of a sham marriage and who married another woman nine months later was guilty of rape, the court holding that there was no common law marriage under all the circumstances of the case. With reference to the construction of the statute, the court say, "This court would not be authorized in holding that the woman upon whom the fraud is practiced, in order to secure her consent to an act of copulation, must be a married woman in every instance. This would be a strained construction; in fact would not be a construction at all, but an interpolation upon the statutes. This is not warranted in construing any law. Nor can we say that the legislature intended to permit fraud practiced upon a single woman not to be rape when the same fraud would be rape if practiced upon a married woman. If the fraud is such as to cause the woman, whether legally married or unmarried, to give consent to the act of copulation, believing she is the wife of the man she is copulating with, it is nevertheless rape whether the woman be married or single." The basic reason for allowing fraud to vitiate consent in any case is well expressed thus, "The outrage upon the woman and the injury to society is just as great in these cases as if actual force had been employed; and we

have been unable to satisfy ourselves that the act can be said to be any less against the will of the woman, than when it is extorted by threats or force." Judge COOLEY in *Crosswell* v. *People,* 13 Mich. 427. The only argument advanced in the principal case in support of the interpretation put upon the statute is based upon the use of the words, "or by the accused in collusion with her husband." But this argument involves the unwarranted assumption that the legislature could not or would not, in one statute, throw over the two classes of women its protection against the two related forms of wrong. Given that assumption, the clause in question shows that the legislature was dealing with married women, and hence not with unmarried women. But, discarding that assumption, the clause means nothing but the familiar abundance of caution. In view of the inherent unsoundness of the ruling in the principal case, and in view of the fact that it was unnecessary to the disposition of the case, it is entitled to very little weight as an authority.

DAMAGES—MISTAKE IN TRANSMITTING TELEGRAM.—Paintiff sent a message offering to buy cotton seed at $20.00, but the telegraph company delivered to the addressee a messsage offering to buy at $22.00. The addressee placed the seed in cars for delivery. Plaintiff, after discovering mistake, paid for the amount contracted for at $22.00 and brought suit against the defendant company, claiming as damages the excess of $2.00 per ton. *Held,* plaintiff was only entitled to nominal damages or amount tendered therefore by defendant, to-wit, 41 cents. *Mt. Gilead Cotton Oil Co.* v. *Western Union Telegraph Co.* (N. C. 1916), 89 S. E. 21.

The court in this case relied on *Pegram* v. *Telegraph Co.,* 100 N. C. 28, 6 S. E. 770, 6 Am. St. Rep. 557, in which case the court stated that the telegraph company was not the agent of the sender and the latter was not bound by the terms of a telegram in which a material alteration was made through the negligence of the company. Following such reasoning, the plaintiff in the principal case was not bound to accept the seed at $22.00 and ought not to recover the excess as damages. This doctrine is supported by *Pepper* v. *Tel. Co.,* 87 Tenn. 554, 11 S. W. 783, 4 L. R. A. 660, 10 Am. St. Rep. 669; *Shingleur* v. *Tel. Co.,* 72 Miss. 1030, 18 So. 425, 30 L. R. A. 444, 48 Am. St. Rep. 604; *Strong* v. *Tel. Co.,* 18 Ida. 389, 109 Pac. 910, 30 L. R. A. N. S. 409, Ann. Cas. 1912A 55; *Postal Tel. Cable Co.* v. *Shaefer etc.,* 110 Ky. 907; *Postal Tel. Co.* v. *Akron Cereal Co.,* 23 Oh. Cir. Ct. Rep. 516. A Canadian case, *Lane* v. *Montreal Tel. Co.,* 7 U. C. C. P. 23, is also in accord with the principal case. In *Ayer* v. *Western Union Tel. Co.,* 79 Me. 493, 10 Atl. 495, the court upheld the view that the company was the agent of the sender and since the latter chose this means of communication he was liable to the addressee who accepted the offer as altered by the company. This seems to be the weight of authority in the United States. *Western Union Tel. Co.* v. *Victor G. Bloede Co.,* 127 Md. 344, 96 Atl. 685; *Western Union Tel. Co.* v. *Shotter,* 71 Ga. 760; *Western Union Tel. Co.* v. *Flint River Lumber Co.,* 114 Ga. 576, 88 Am. St. Rep. 36, 40 S. E. 815; *Postal Tel. Cable Co.* v. *Lathorp,* 131 Ill. 575; *Fisher* v. *W. Union Tel. Co.,* 119 Ky. 885; *Ashford* v.